

Ex. Doc. No. 73.

HOUSE OF REPRESENTATIVES.

WILLIAM VAWTER, DECEASED.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING

A report upon the claim of William Vawter, deceased, in pursuance of a resolution of the House of Representatives of the 3d instant.

JULY 28, 1848.

Laid upon the table and ordered to be printed.

WAR DEPARTMENT,
Washington, July 12, 1848.

SIR: As required by the resolution of the House of Representatives of the 3d instant, I have examined the claim of the legal representatives of William Vawter, deceased, and finding that it cannot be allowed under the act of July 5, 1832, I have the honor, in pursuance of the resolution, to report the facts of the case, which, so far as they are material to the question, are as follows:

During the war of the revolution, the State of Virginia maintained, besides her regular quota of troops on continental establishment, several regiments and corps of regular State troops, independent of the militia, for the defence of the State and her extensive territories. To the officers of these troops, both of the continental and State lines, she promised by the act of assembly of May, 1779, half pay for life, provided they served as required by the act, and provided Congress made no tantamount provision for them, indicating by the latter proviso, the expectation afterwards realized, that Congress would assume the obligation which she was compelled to incur, in order to keep her troops in the field. So far as regarded

the continental officers, she was relieved of her obligation the following year, by the resolution of Congress giving half pay for life, afterwards commuted for five years' full pay, to the continental officers; but it was not until the 5th of July, 1832, that her obligations to the State troops were assumed by the United States. The act of that date refunds to the State the amount she had paid on account of the claims of those officers, appropriates a sum for the satisfaction of such claims as had been prosecuted to judgment against the State, and directs the payment from the treasury of the United States of all outstanding claims on that account.

It is under this last clause that the claim of Vawter's representatives is made, and the question is whether he had at the date of the act a valid claim against the State of Virginia, under her act of assembly of May, 1779.

It is admitted that Vawter's service fulfilled the requirements of the act, so as to entitle him to the provision made by that act, or some tantamount provision by Congress; (report of the Commissioner of Pensions, herewith,) and the remaining question is as to the effect on this right of a payment made to his legal representatives under an act of May 25, 1832. That payment is expressed by the act to be five years' full pay in commutation of his half pay for life; and by this expression, and by the mode of settlement prescribed, the claim was in every respect placed upon the same footing with those of the continental officers, under the resolution of Congress of October, 1780. Now, as above stated, the provision of five years' full pay in commutation of half pay for life, granted by Congress to the continental officers of Virginia, in common with others, has been considered so far tantamount to the provision made for them by the act of assembly, as to bar their claim under that act, in accordance with the proviso. The same construction applied to the facts in Vawter's case, would bar the claim of his representatives against the State of Virginia, under her act of May, 1779, and consequently against the United States, under the act of July 5, 1832. The Secretary of the Treasury, who was at first charged with the execution of that act, rejected this claim upon this ground, (Rep. Com. 24th Congress, 2d session, No. 156, p. 2,) and I concur in the opinion, believing that the mode of settlement adopted in that case, though not so favorable to the claimants as that afterwards prescribed by the act of 5th July, 1832, yet being the same that had been followed in the case of the continental officers, must be construed to have the same operation.

It is proper to remark that a consideration presents itself in this case, which, perhaps, had no place in the settlement of the claims of the continental officers. It is probable that when most of their claims were settled, being at a comparatively early period, the amount of half pay then accrued, would not have been equal to the amount of five years' full pay and interest; and the receipt of this larger sum might be considered, in equity as well as law, a fair satisfaction for the smaller sum which could then be claimed, and the chance of a further sum dependent upon the duration of the claimants' life. In the case of Vawter, the same uncertainty did

not exist, the amount of half pay actually due him by the State of Virginia at the time of his death, in 1823, must have considerably exceeded the amount of \$4,821 45, which was paid under the act of Congress of May 25, 1832. The claimants, however, in view of the uncertainty of payment by Virginia, and considering their claim good under the resolution of Congress, elected to place it on the ground of continental service, and they should abide their own election. Upon this point the attorney general, Mr. Taney, in his opinion of March 21, 1833, in the case of Vawter and others, (see Opinions, page 900,) says: "In this view of the act of July 5, 1832, it is not material to inquire whether, according to the true construction of the resolve of Virginia, of 1779, the commutation can be regarded as tantamount or not to the half pay promised. Whatever may be the obligations of Virginia, Congress have only authorized the half pay to be given where the officer had not indicated, by some act of his own, that he had elected to accept the substitute offered." And he concludes:

"These principles embrace the case of Lieutenant Vawter, (the very case now under consideration,) and as the commutation has been received by his representatives, I think they are not under the law of July 5, 1832, entitled now to demand the half pay." According to these views it is immaterial whether he was or was not entitled to commutation as a continental officer, the receipt of it being sufficient to bar the claim; but, in fact, Colonel George Gibson's regiment, to which Vawter belonged, has been regarded by the Treasury and War Departments as continental, and the officers pensioned as such. The committee, also, who drew the act of May 25, 1832, for the payment of Vawter's claim, reported that Gibson's regiment "was transferred from the State to the continental establishment," and considered "the case to come within the provisions of the resolution (of Congress) of October 21, 1780," which views may be considered as substantially adopted by the passage of the act; and I may further remark that there is now before the Senate, favorably reported by the Committee on Revolutionary Claims, (Rep. 186, present session,) a bill to settle and adjust the account of Colonel Gibson, who commanded that regiment "as a colonel in the Virginia line on the continental establishment, which, if passed, would seem to be conclusive as to the character of the regiment.

Very respectfully, your obedient servant,

W. L. MARCY,
Secretary of War.

HON. ROBERT C. WINTHROP,
Speaker of the House of Representatives.

PENSION OFFICE, July 6, 1848.

SIR: I have carefully examined the papers in the case of the legal representatives of the late Lieutenant William Vawter,

which are herewith enclosed, together with the resolution of the House of Representatives, in relation to the claim.

It appears that William Vawter was a second lieutenant in the first Virginia State regiment, and from a list of officers of the Virginia State troops, on file in this office, it is clearly shown that he was entitled to half-pay, under the several acts of the Virginia legislature. This case, therefore, it seems to me, is embraced by the provisions of the act of the 5th July, 1832. If the act of Congress, of the 25th of May, 1832, had not given him five years' full pay, and by that act recognised him as a continental officer, this department would not, if the claim were now presented at this office for adjudication, hesitate for a moment to allow it under the provisions of the act of 5th July, 1832.

The foregoing is a brief statement of the case. Whether it would be proper to allow the claim and deduct the five years' full pay, allowed by Congress, is not for me to determine.

I have the honor to be, very respectfully, your obedient servant,

J. L. EDWARDS,

Commissioner of Pensions.

Hon. W. L. MARCY,

Secretary of War.